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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT**

**DISTRICT OF ARIZONA**

Erik Nielsen,

Plaintiff,

vs.

Global Shield Risk Solutions, LLC, an Arizona  
Limited Liability Company; Jeroen Rodenburg  
and Jane Doe Rodenburg, husband and wife,

Defendants.

Case No.:

**COMPLAINT**

**(Jury Trial Requested)**

Plaintiff alleges:

**NATURE OF THE CASE**

1. The Fair Labor Standards Act ("FLSA") is designed to eliminate "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers." 29 U.S.C. § 202(a). To achieve its goals, the FLSA sets overtime pay requirements for covered employers. 29 U.S.C. §§ 206(a) &

1 207(a).

2 2. Employers must compensate employees for all work that employers permit  
3 employees to perform. *See* 29 C.F.R. § 785.11. In such cases, it is the responsibility of  
4 employers' management to ensure that work is not performed if management does not desire  
5 for such work to be performed. 29 C.F.R. § 785.13. Employers may not accept the benefits of  
6 employees performing work without compensating the employees for their work. *Id.*

7  
8 3. Plaintiff brings this action against Defendant for unlawful failure to pay overtime  
9 wages in direct violation of the Fair Labor Standards Act, 29 USC § 201 *et seq.* (hereinafter  
10 FLSA) and specifically the overtime provision of the FLSA found at § 207(a).

11 4. For at least one (1) year prior to the filing of this action, Defendants had a  
12 consistent policy and practice of requiring its employees to work well in excess of forty (40)  
13 hours per week without paying them time and a half for hours worked over forty (40) hours per  
14 week.

15  
16 5. For at least one (1) year prior to the filing of this action, Plaintiff worked at least  
17 forty-five hours per week and was not paid time and one-half for the hours worked above forty  
18 (40).

19 6. For at least one (1) year prior to the filing of this action, Defendants had a  
20 consistent policy and practice of misclassifying certain employees as independent contractors.

21 7. Furthermore, Defendants have failed to compensate Plaintiff according to  
22 applicable state laws, specifically A.R.S. § 23-350 *et seq.*

23  
24 **JURISDICTION AND VENUE**

25 8. This Court has jurisdiction over the subject matter and the parties hereto pursuant

1 to 29 U.S.C. § 216(b), and 28 U.S.C. § 1331.

2 9. Venue is proper under 28 U.S.C. § 1391(b) because all or a substantial part of the  
3 events or omissions giving rise to the claims occurred in this District.

4 10. The named Defendants, by virtue of their own acts and omissions or by virtue of  
5 the acts and omissions committed by one or more of their agents, employees or representatives,  
6 as described herein, have conducted business or caused events to occur within the District of  
7 Arizona and, more particularly, within Maricopa County, Arizona, as more particularly  
8 described herein so as to give rise to both subject matter and personal jurisdiction of this Court.  
9

10 **PARTIES**

11 11. At all times material hereto, Plaintiff was and continues to be a resident of  
12 Maricopa County, Arizona.

13 12. Defendant Global Shield Risk Solutions, LLC, is a limited liability company  
14 organized under the laws of the State of Delaware, doing business in Maricopa County,  
15 Arizona, with its domestic address 411 East Indian School, #1103, Phoenix, Arizona 85012,  
16 and is subject to the jurisdiction of this Court.  
17

18 13. Upon information and belief, and consistent with the information available from  
19 the Arizona Corporation Commission, Defendant Jeroen Rodenburg was and is the owner of  
20 Global Shield Risk Solutions, LLC.

21 14. Upon information and belief, at all times material hereto Defendants Jeroen and  
22 Jane Doe Rodenburg were and are residents of Maricopa County, Arizona.  
23

24 15. Jane Doe is the fictitious name of Jeroen Rodenburg's wife. When her true name  
25 is ascertained this complaint will be amended. David and Jane Doe Rodenburg have caused

1 events to take place giving rise to this Complaint as to which their marital community is fully  
2 liable.

3 16. At all relevant times, Plaintiff was an “employee” of Global Shield Risk  
4 Solutions, LLC, as defined by 29 U.S.C. § 203(e)(1).

5 17. The provisions set forth in 29 U.S.C § 206 and § 207, respectively, of the FLSA  
6 apply to Global Shield Risk Solutions, LLC.  
7

8 18. At all relevant times, Global Shield Risk Solutions, LLC, was and continues to  
9 be an employer as defined in 29 U.S.C. § 203(d).

10 19. On information and belief, Defendant Jeroen Rodenburg is deemed an  
11 “employer” for purposes of the FLSA, including, without limitation, 29 U.S.C. § 216, and is  
12 co-equally liable with Defendant Global Shield Risk Solutions, LLC, for all matters.

13 20. At all times material to this action, Global Shield Risk Solutions, LLC, was and  
14 is an enterprise engaged in commerce or in the production of goods for commerce as defined  
15 by § 203(s)(1) of the FLSA.  
16

17 21. Upon information and belief, at all relevant times, the annual gross revenue of  
18 Global Shield Risk Solutions, LLC, exceeded \$500,000.00.  
19

### 20 **FACTUAL BACKGROUND**

21 22. Plaintiff was hired by Defendants in February of 2013 as a non-exempt hourly  
22 paid security specialist.

23 23. Defendants classified Plaintiff as an independent contractor and paid his wages  
24 by as a 1099 employee.  
25

1           24. Plaintiff's job responsibilities focused on providing security for Defendants'  
2 clients. This included surveillance, investigations, drafting reports, and consulting with clients.

3           25. Plaintiff was paid hourly at a rate of \$12.00 per hour.

4           26. Plaintiff was a non-exempt employee.

5           27. Plaintiff was not a manager.

6           28. Plaintiff did not exercise discretion and independent judgment with respect to  
7 matters of significance.

8           29. Plaintiff had no control over job duties and responsibilities and did what he was  
9 instructed to do by Defendant.

10           30. Plaintiff's work hours were dictated by Defendant.

11           31. Plaintiff's duties were an integral part of Defendant's operation.

12           32. Plaintiff had no independent business organization or operation.

13           33. Plaintiff made no investment in facilities.

14           34. From February 2013 through June 2013, Defendants failed to properly  
15 compensate Plaintiff for his overtime hours.

16           35. During this time, Plaintiff routinely worked forty-five (45) to seventy (70) hours  
17 per week.

18           36. Plaintiff was not paid for hours over forty (40) per week.

19           37. Defendants' failure or refusal to properly compensate Plaintiff at the rates and  
20 amounts required by the FLSA was willful.

21           38. Defendants refused or failed to properly disclose to or apprise Plaintiff of his  
22 rights under the FLSA.



1           48. Defendants have not made a good faith effort to comply with the FLSA.

2           49. Plaintiff is also entitled to an award of attorneys' fees pursuant to 29 U.S.C. §  
3 216(b).

4           WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor  
5 against Defendants:

- 6                   a. Awarding Plaintiff overtime compensation in the amount due to him for all of  
7 his time worked in excess of forty (40) hours per work week at an amount  
8 equal to one and one-half (1 1/2) times Plaintiff's regular rate while at work  
9 for Defendants;  
10                  b. Awarding Plaintiff liquidated damages in an amount equal to the overtime  
11 award;  
12                  c. Awarding Plaintiff's reasonable attorneys' fees and costs and expenses of the  
13 litigation pursuant to 29 U.S.C. § 216(b);  
14                  d. For Plaintiff's costs incurred in this action;  
15                  e. Awarding Plaintiff's pre-judgment interest, at the highest legal rate, on all  
16 amounts set forth in subsections (a) and (b) above from the date of the  
17 payment due for that pay period until paid in full;  
18                  f. Awarding Plaintiff's post-judgment interest, at the highest legal rate, on all  
19 awards from the date of such award until paid in full;  
20                  g. For such other and further relief as the Court deems just and proper  
21  
22  
23

24                                   **COUNT TWO**  
25                                   **MISCLASSIFICATION AS INDEPENDENT CONTRACTOR**

1           50. Plaintiff incorporates and adopts paragraphs 1 through 49 above as if fully set  
2 forth herein.

3           51. Defendants misclassified Plaintiff as an independent contractor.

4           52. The misclassification resulted in Defendants' failure to pay employment taxes,  
5 shifting the burden onto the Plaintiff in the form of self-employment taxes.  
6

7           53. As a direct and proximate result of Defendants' misclassification or Plaintiff's  
8 employment status, Plaintiff is entitled to compensation for payment of excess taxes and other  
9 lost benefits of the employer/employee relationship.

10           WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor  
11 against Defendants:

- 12           a. Awarding Plaintiff the difference between the amount that should have been  
13           taxed if Plaintiff was appropriately classified and the amount that Plaintiff  
14           actually paid in self-employment tax.  
15           b. Awarding Plaintiff liquidated damages in an amount equal to the self-  
16           employment tax award;  
17           c. Awarding Plaintiff reasonable attorneys' fees and costs and expenses of the  
18           litigation pursuant to 29 U.S.C. § 216(b);  
19           d. For Plaintiff's costs incurred in this action;  
20           e. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all amounts  
21           set forth in subsections (a) and (b) above from the date of the payment due for  
22           that pay period until paid in full;  
23           that pay period until paid in full;  
24           that pay period until paid in full;  
25



- 1 f. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all awards  
2 from the date of such award until paid in full;  
3 g. For such other and further relief as the Court deems just and proper.  
4

5 **COUNT THREE**  
6 **FAILURE TO PAY WAGES**

7 54. Plaintiff incorporates and adopts paragraphs 1 through 53 above as if fully set  
8 forth herein.

9 55. Upon information and belief, Defendants failed to pay Plaintiff “wages” (as that  
10 term is defined by A.R.S. § 23-350) at Plaintiff’s regular rate while Plaintiff was in the employ  
11 of Defendant.

12 56. Upon information and belief, Defendants’ failure to pay Plaintiff said wages was  
13 willful, unreasonable, and in bad faith.

14 57. Pursuant to A.R.S. § 23-355, Plaintiff is entitled to an award of treble the amount  
15 calculated above.

16 58. Pursuant to, *inter alia*, A.R.S. § 12-341.01, Plaintiff is entitled to an award of his  
17 attorneys’ fees and costs incurred in this action.

18 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor  
19 against Defendants:

- 20 a. Awarding Plaintiff regular compensation in the amount due to him for all of  
21 Plaintiff’s time worked that was not compensated for while at work at  
22 Defendant Energy Efficient Contracting.  
23 b. Awarding Plaintiff treble the amount calculated pursuant to the preceding  
24 paragraph.  
25

- c. Awarding Plaintiff his reasonable attorneys' fees and costs and expenses of the litigation pursuant to A.R.S. § 12-341.01.
- d. For Plaintiff's costs incurred in this action.
- e. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all amounts set forth in subsections a and b above from the date of the payment due for that pay period until paid in full.
- f. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all awards from the date of such award until paid in full.
- g. Ordering any other and further relief as the Court deems just and proper.

**COUNT FOUR**  
**DECLARATORY JUDGMENT**

59. Plaintiff incorporates and adopts the preceding paragraphs as if fully set forth herein.

60. Plaintiff and Defendants have a Fair Labor Standards Act dispute pending.

61. The Court has jurisdiction to hear Plaintiff's request for declaratory relief pursuant to the Declaratory Judgment Act 28 U.S.C. §§ 2201-2202.

62. Plaintiff may obtain declaratory relief.

63. Defendant employed Plaintiff.

64. Defendant is an enterprise covered by the FLSA.

65. Plaintiff is individually covered by the FLSA.

66. On certain occasions, Plaintiff was not compensated at a rate of at least minimum wage for work performed for Defendants.

67. Plaintiff is entitled to overtime wages pursuant to 29 U.S.C. § 207.

1       68. Defendant did not keep accurate time records pursuant to 29 U.S.C §211(c) and  
2 29 C.F.R. Part 516.

3       69. Plaintiff is entitled to an equal amount of liquidated damages as Defendant's  
4 policy of failing to pay proper overtime compensation remains in effect.

5       70. Defendant did not rely on a good faith defense in its failure to abide by the  
6 provisions of the FLSA and failure to pay overtime compensation.

7  
8       71. It is in the public interest to have these declarations of rights recorded as  
9 Plaintiff's declaratory judgment action serves the useful purposes of clarifying and settling the  
10 legal relations at issue, preventing future harm, and promoting the remedial purposes of the  
11 FLSA.

12       72. The declaratory judgment action further terminates and affords relief from  
13 uncertainty, insecurity, and controversy giving rise to the proceeding.

14       WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor  
15 against Defendants:  
16

- 17       a. Declaring, pursuant to 29 U.S.C. §§ 2201–02, that the acts and practices  
18 complained of herein are in violation of the minimum wage provisions of the  
19 FLSA.
- 20       b. Declaring, pursuant to 29 U.S.C. §§ 2201–02, that the acts and practices  
21 complained of herein are in violation of the overtime provisions of the FLSA.
- 22       c. For Plaintiff's costs incurred in this action.
- 23       d. Awarding Plaintiff's reasonable attorney's fees and costs and expenses of the  
24 litigation pursuant to 29 U.S.C. § 216(b);  
25

1 e. For such other and further relief as the Court deems just and proper.  
2

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs and all similarly situated employees hereby requests that upon trial of this  
5 action, all issues be submitted to and determined by a jury except those issues expressly  
6 reserved by law for determination by the Court.  
7

8 Dated: September 16, 2013

Respectfully submitted,

9 **PHILLIPS DAYES LAW GROUP PC**

10 /s/ John L. Collins

11 John L. Collins

12 johnc@phillipsdayeslaw.com

13 Attorney for Plaintiffs  
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